

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

INA STEINER, DAVID STEINER, and STEINER ASSOCIATES, LLC,)
Plaintiffs,)
v.)
EBAY INC., et al.,)
Defendants.)

Civil Action No. 21-CV-11181-PBS

**DEFENDANT EBAY INC.’S OBJECTIONS TO PLAINTIFFS’ NOVEMBER 3, 2025
“EXHIBIT LIST EXCHANGE”**

Consistent with the Court’s Order for Pretrial Conference, Dkt. No. 747, Defendant eBay Inc. objects to Plaintiffs’ November 3, 2025 “Exhibit List Exchange.” Plaintiffs’ disclosures of November 3, 2025 are inappropriate and untimely.

First, designating “all discovery previously produced by Plaintiffs” as trial exhibits is an inadequate disclosure. Plaintiffs must produce a list of individual documents or things that they intend to offer as trial exhibits. Designating “all discovery previously produced by Plaintiffs” does not adequately permit objections as to potential exhibits or conferrals regarding the same. eBay expects that Plaintiffs will properly disclose individual exhibits on November 20, 2025. eBay objects to the use at trial of any exhibits not individually disclosed.

Second, items one through three were improperly obtained outside the discovery deadline. *E.g.*, *Alper v. United States*, 190 F.R.D. 281, 283–84 (D. Mass. 2000); *Dennison v. Ryan*, No. CV-18-04539-PHX-SPL, 2022 WL 3134450, at *2 (D. Ariz. Aug. 5, 2022). eBay objects to the use of these items at trial for any purpose. If these items appear on Plaintiffs’ itemized exhibit list on November 20, then eBay reserves the right to request that the Court reopen discovery and permit depositions of the Natick

Police Department.

Third, items four through sixteen, which appear to have been in Plaintiffs' possession for the duration of this litigation, were not appropriately disclosed in discovery even though they are clearly contemplated by Defendants' requests for production. As you know, Defendants' March 15, 2025 Request For Production No. 88 requested "All Documents and Communications any Plaintiff relied upon in any way or intends to use in any way in connection with the above-captioned matter. This Includes, but is not limited to, all Documents and Communications that Plaintiff intends to produce or use at trial or upon which any Plaintiff relies for any portion of Plaintiffs' claims [and] all Documents and Communications relied upon in drafting the Amended Complaint or Plaintiffs' initial disclosures." The Requests for Production further defined "documents" to include "the broadest possible construction under Rule 34" to include any "tangible thing containing any information or Communication or having the ability to convey or exhibit the same through any medium whatsoever." Plaintiffs did not indicate that they were withholding documents or things such as items four through sixteen. The belated disclosure of trial exhibits that were not produced in the ordinary course of discovery is subject to FRCP 37(c)(1), which precludes the use of such exhibits at trial "unless the failure was substantially justified or is harmless." *E.g., FabriClear, LLC v. Harvest Direct, LLC*, No. CV 20-10580-TSH, 2023 WL 8098778, at *3 (D. Mass. Nov. 21, 2023); *Menninger v. PPD Dev., L.P.*, No. CV 19-11441-LTS, 2023 WL 2563642, at *1 (D. Mass. Mar. 17, 2023); *Mongue v. Wheatleigh Corp.*, No. 3:18-CV-30095-KAR, 2021 WL 9217748, at *2 (D. Mass. Sept. 29, 2021). eBay objects to the use of these items at trial for any purpose.

Dated: November 17, 2025

Respectfully submitted,

/s/ Jack W. Pirozzolo

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CERTIFICATE OF SERVICE

I hereby certify that on November 17, 2025, this document, filed through the CM/ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: November 17, 2025

/s/ Jack W. Pirozzolo

Jack W. Pirozzolo